

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

December 9, 2008

Elisabeth A. Shumaker
Clerk of Court

SAMUEL K. LIPARI,

Plaintiff - Appellant,

v.

US BANCORP NA; US BANK NA,

Defendants - Appellees.

No. 08-3338
(2:07-CV-02146-CM-DJW)

ORDER

The plaintiff in underlying district court proceeding, Samuel K. Lipari, has filed what he styles as "Plaintiff's Amended Notice of Appeal" following his initiation of a prior attempted appeal, our Case No. 08-3287.

Fed. R. App. P. 3(c)(1)(B) requires an appellant to "designate the judgment, order, or part thereof being appealed." The appellant states only in his amended notice of appeal that he seeks to appeal "subsequent orders by the magistrate upholding the defendants' automatic protective orders and ordering the plaintiff to show cause, awarding \$700.00 in attorney fees and the trial judges' memorandum and order." No dates or docket numbers for these orders are provided.

The "amended" notice of appeal was filed on December 3, 2008. It appears that Mr. Lipari is attempting to appeal the order entered November 26, 2008,

Docket No. 158. That order awarded the defendants \$700.00 in attorneys fees.

An award of attorneys fees is collateral to and separate from a decision on the merits. See White v. New Hampshire Dep't of Emp. Sec., 455 U.S. 445, 451-52 n.13 (1982). We have accordingly opened a new appellate docket for this apparent appeal from the order granting attorneys fees to the defendants. The appellant will be obligated to pay the appellate filing and docketing fees for this appeal, or else be granted leave to proceed *in forma pauperis*.

The order that Mr. Lipari seeks to appeal was entered by a magistrate judge, not the district court judge. It does not appear that the case was being tried to the magistrate judge by consent of the parties. See 28 U.S.C. §§ 636 & 1291.

Within 14 days from the date of this order, Mr. Lipari shall (1) either pay the \$455.00 filing fee for this appeal or file in the district court a motion seeking leave to proceed *in forma pauperis* in this appeal; and shall (2) file with this court a memorandum brief explaining what order or orders of the district court he is attempting to appeal and the governing federal laws that would establish any basis for this court's jurisdiction.

Failure to comply with the directives of this order will result in dismissal of the appeal for failure to prosecute, pursuant to Tenth Cir. R. 42.1, without further notice to the parties.

Within 14 days from the date of service of Mr. Lipari's memorandum brief, the defendants shall file their response to his memorandum brief stating their

views on whether appellate jurisdiction exists in this court for this appeal.

Entered for the Court
ELISABETH A. SHUMAKER
Clerk of Court

A handwritten signature in black ink, appearing to read "Douglas E. Cressler". The signature is written in a cursive style with a long horizontal stroke at the end.

by:
Douglas E. Cressler
Chief Deputy Clerk